



**SENATE SUBSTITUTE AMENDMENT 1,
TO 2011 SENATE BILL 300**

March 7, 2012 – Offered by Senators LASEE and LAZICH.

- 1 **AN ACT to amend** 59.694 (7) (c) and 62.23 (7) (e) 7. of the statutes; **relating to:**
2 the length of time for which a variance applies.

Analysis by the Legislative Reference Bureau

Under current law, a city, village, or town that is authorized to exercise village powers (municipality) or county is authorized to enact zoning ordinances that regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards and other open spaces, the density of population, and the location and use of buildings, structures, and land for various purposes.

A municipality's board of appeals or a county's board of adjustment (board) is authorized under current law to hear and decide appeals that allege there is an error in the enforcement of a zoning ordinance, to hear and decide special exceptions to the terms of a zoning ordinance, and to authorize a variance from the terms of a zoning ordinance. A "use" variance grants permission for a use that is not permitted by the zoning ordinance, and an "area" variance relaxes restrictions on dimensions, such as setback, frontage, height, bulk, density, and area. To grant a variance, a board must find four things:

1. The variance will not be contrary to the public interest.
2. Substantial justice will be done by granting the variance.
3. The variance is needed so that the spirit of the ordinance is observed.
4. Due to special conditions, a literal enforcement of the provisions of the zoning ordinance will result in unnecessary hardship.

This substitute amendment authorizes a municipality or county to enact an ordinance specifying an expiration date for a variance. If no such ordinance exists at the time a variance is granted, or if a board of adjustment or appeals does not specify an expiration date, however, the substitute amendment specifies that a variance that is granted does not expire unless the board specifies in the variance, at the time it is granted, a date after which the variance does not apply, meaning a specific date by which the action authorized by the variance must be commenced or completed. The substitute amendment also codifies a court decision (*Goldberg v. Milwaukee Zoning Appeals Board*, 115 Wis. 2d 517 (Ct. App. 1983)) stating that a variance runs with the land.

The substitute amendment first applies, retroactively, to a variance that was granted before the effective date of the substitute amendment.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 59.694 (7) (c) of the statutes is amended to read:

2 59.694 (7) (c) To authorize upon appeal in specific cases variances from the
3 terms of the ordinance that will not be contrary to the public interest, where, owing
4 to special conditions, a literal enforcement of the provisions of the ordinance will
5 result in unnecessary hardship, and so that the spirit of the ordinance shall be
6 observed and substantial justice done. A county board may enact an ordinance
7 specifying an expiration date for a variance granted under this paragraph if that date
8 relates to a specific date by which the action authorized by the variance must be
9 commenced or completed. If no such ordinance is in effect at the time a variance is
10 granted, or if the board of adjustment does not specify an expiration date for the
11 variance, a variance granted under this paragraph does not expire unless, at the time
12 it is granted, the board of adjustment specifies in the variance a specific date by
13 which the action authorized by the variance must be commenced or completed. An
14 ordinance enacted after the effective date of this paragraph ... [LRB inserts date],
15 may not specify an expiration date for a variance that was granted before the

1 effective date of this paragraph ... [LRB inserts date]. A variance granted under this
2 paragraph runs with the land.

3 **SECTION 2.** 62.23 (7) (e) 7. of the statutes is amended to read:

4 62.23 (7) (e) 7. The board of appeals shall have the following powers: To hear
5 and decide appeals where it is alleged there is error in any order, requirement,
6 decision or determination made by an administrative official in the enforcement of
7 this section or of any ordinance adopted pursuant thereto; to hear and decide special
8 exception to the terms of the ordinance upon which such board is required to pass
9 under such ordinance; to authorize upon appeal in specific cases such variance from
10 the terms of the ordinance as will not be contrary to the public interest, where, owing
11 to special conditions, a literal enforcement of the provisions of the ordinance will
12 result in practical difficulty or unnecessary hardship, so that the spirit of the
13 ordinance shall be observed, public safety and welfare secured, and substantial
14 justice done. The council of a city may enact an ordinance specifying an expiration
15 date for a variance granted under this subdivision if that date relates to a specific
16 date by which the action authorized by the variance must be commenced or
17 completed. If no such ordinance is in effect at the time a variance is granted, or if
18 the board of appeals does not specify an expiration date for the variance, a variance
19 granted under this subdivision does not expire unless, at the time it is granted, the
20 board of appeals specifies in the variance a specific date by which the action
21 authorized by the variance must be commenced or completed. An ordinance enacted
22 after the effective date of this subdivision [LRB inserts date], may not specify an
23 expiration date for a variance that was granted before the effective date of this
24 subdivision [LRB inserts date]. A variance granted under this subdivision runs
25 with the land. The board may permit in appropriate cases, and subject to appropriate

1 conditions and safeguards in harmony with the general purpose and intent of the
2 ordinance, a building or premises to be erected or used for such public utility
3 purposes in any location which is reasonably necessary for the public convenience
4 and welfare.

5 **SECTION 3. Initial applicability.**

6 (1) This act first applies, retroactively, to a variance that was granted before
7 the effective date of this subsection.

8 (END)